LING LEONG PENG v. WONG KEE TEH & ANOR

HIGH COURT MALAYA, IPOH
SM KOMATHY JC
[ORIGINATING SUMMONS NO: 24NCVC-33-01-2015]
2 JULY 2015

LEGAL PROFESSION: *Professional discipline – Misconduct – Criminal misconduct – Hearing before Disciplinary Committee – Whether disciplinary proceedings could be initiated against advocate and solicitor based on complaint amounting to criminal misconduct – Whether a violation of art. 145(3) Federal Constitution – Whether plaintiff found guilty by court of law – Whether hearing before Disciplinary Committee premature – Whether Disciplinary Board disagreed with findings of Disciplinary Committee and made such order that it deemed fit – Rehearing of complaint before Disciplinary Committee – Whether permissible – Whether provisions under Legal Profession Act 1976 violated – Whether Disciplinary Board empowered to investigate complaints that were only non-criminal in nature – Legal Profession Act 1976, ss. 94(3)(c), 103A, 103D & 103EA*

Vide a letter dated 19 June 2012, the second defendant, *ie*, the Advocates and Solicitors Disciplinary Board ('DB') received a complaint from the first defendant alleging that the plaintiff, an advocate and solicitor, was guilty of dishonesty, misuse and misappropriation of money. At the hearing before the Disciplinary Committee ('DC'), the plaintiff raised a preliminary objection that it was premature for the DC to hear the complaint against the plaintiff since the power to investigate a criminal misconduct under the Legal Profession Act 1976 ('LPA') could only be exercised upon the plaintiff's conviction by a court of law. However, the DC overruled the objection and the hearing proceeded. At the conclusion of the hearing, the DC decided that there was no case to answer and recommended that the complaint against the plaintiff be dismissed. The DB disagreed with the findings and directed the plaintiff to appear before the DB to make his representations as to why liability should not be found against him. After the said hearing, the DB informed the plaintiff of its decision to appoint a new DC to investigate the complaint pursuant to s. 103D(3) of the LPA (as amended). Dissatisfied, the plaintiff filed an objection pursuant to s. 103EA of the LPA against the ruling for the complaint to be reheard before a new DC. The DB informed the plaintiff, *inter alia*, that the allegations of fraud or forgery were also matters for the new DC to decide and ss. 103EA and 103D(1) did not apply to the present complaint since the said complaint was lodged prior to 3 June 2014. The plaintiff then filed this present action and sought for the following orders, *ie*, (i) that on a true interpretation of ss. 94, 100 and 103A of the LPA, the plaintiff was not liable to be subjected to any disciplinary proceedings by the DB before he had been found guilty by a court of law of any such offence involving dishonesty, fraud, forgery, misuse or misappropriation of money; (ii) that the DB's decision to rehear

A the complaint against the plaintiff before a new DC was a violation of art. 145(3) of the Federal Constitution since the plaintiff had not been charged and convicted for any criminal offence by a court of law; and (iii) there was non-compliance of s. 103D of the LPA. The plaintiff argued that the DB was only empowered under the LPA to deal with and
B investigate complaints that were non-criminal in nature. Further, it was contended that the DB had usurped the discretionary powers conferred to the Attorney General under art. 145(3) of the Federal Constitution. The issues that arose for determination were (a) whether the DB could initiate disciplinary proceedings against an advocate and solicitor on a complaint
C that amounted to criminal misconduct; and (b) whether the present application was maintainable to challenge the decision of the DB for the complaint against the plaintiff to be reheard before a new panel.

Held (dismissing plaintiff's application):

D **(1)** The plaintiff was bound by the provisions in the LPA. Section 94 of the LPA does not state that a criminal conviction is a pre-requisite for the appointment of a DC. This provision merely empowers the DB to deal with errant lawyers by striking them off the roll or by suspending them for misconduct. Section 100 deals with the procedure to be undertaken when a written application or complaint is referred to the
E DB. It authorises the DB to refer the application or complaint to a DC for formal investigation if it is deemed necessary. It does not proscribe the power of the DB to refer an application or complaint to a DC to non-criminal misconduct. (paras 17, 18 & 24)

F **(2)** Section 103A(1) of the LPA stipulates that the DB can appoint a DC in three instances, *ie*, (i) when the DB determines that a DC ought to be appointed; (ii) when an advocate and solicitor has been convicted of an offence for criminal breach of trust or any other offence involving fraud or dishonesty; and (iii) when the advocate and solicitor has been suspended. In the present case, the DB proceeded under the first
G instance and this situation would arise when a written application or complaint was referred to the DB pursuant to s. 100. (para 19)

(3) The DB was entitled to investigate any complaint or misconduct against an advocate and solicitor upon a written application or a complaint made to it which comes within the scope of s. 94(3) of the LPA. This
H court was unable to agree with the proposition that complaints alleging criminal misconduct by an advocate and solicitor could not be investigated by the DC and DB until the advocate and solicitor concerned was convicted by a court of law. Further, the failure of the DB to apply for the plaintiff's suspension did not preclude it from
I appointing a DC to investigate the complaint. (para 20)

(4) There was no merit in the contention that the DB was in violation of the articles in the Federal Constitution when it initiated disciplinary proceedings against the plaintiff prior to his conviction. The LPA expressly provides under s. 94(3)(c) of the LPA that a complaint against an advocate and solicitor alleging that he had been dishonest or fraudulent in the discharge of his duties is misconduct that permits the DB to appoint a DC to investigate the complaint. If the Legislature intended to limit the powers of the DB to investigate complaints that were not criminal in nature, it would have expressly provided so and s. 94(3)(c) would have been omitted. (para 21)

(5) Pursuant to s. 103D of the LPA, it was permissible for the DB to disagree with the findings or recommendation of the DC and make such order that it deems fit. Pursuant to s. 103EA, the plaintiff should have filed an application to review the order made by the DB. The present application was not maintainable since the plaintiff's recourse was to seek a review of the order made by the DB if he was dissatisfied with it. (paras 22 & 24)

Legislation referred to:

Federal Constitution, arts. 5(1), 8(1), 145(3)

Legal Profession Act 1976, ss. 94(3)(c), (4), 100, 103A(1)(b), 103D(1), (3), 103E, 103EA

Penal Code, s. 409

For the plaintiff - Nga Hock Cheh (Thinesh Vadivelu with him); M/s Nga Hock Cheh & Co

For the 1st defendant - Awtar Singh Gill (Hayati Yahya Udin with him); M/s Awtar Ghazali, Augustine & Co

For the 2nd defendant - Raam Kumaar; M/s Kbtan, Kumar & Partners

Reported by Kumitha Abd Majid

JUDGMENT

SM Komathy JC:

[1] The issue that arises for determination in these proceedings is whether the Disciplinary Board ('DB') under Legal Profession Act 1976 ('LPA') is empowered to initiate disciplinary proceedings against an advocate and solicitor on a complaint that amounted to criminal misconduct.

The Salient Facts

[2] By a letter dated 19 June 2012, the first defendant wrote to the second defendant, the DB, complaining that the plaintiff, an advocate and solicitor, was guilty of dishonesty, misuse and misappropriation of money.

[3] The DB appointed a Disciplinary Committee ('DC') under s. 103A of the LPA to investigate and submit a report on the complaint. At the hearing before the DC, the plaintiff raised a preliminary objection that it

was premature for the DC to hear the complaint against the plaintiff as the power to investigate the criminal misconduct under the LPA could only be exercised upon the plaintiff's conviction by a court of law. As the plaintiff had not been convicted by a court of law, no disciplinary proceedings could be initiated. The objection was overruled by the DC and the hearing proceeded.

[4] At the conclusion of the hearing, the DC by a majority held that there was no case to answer and recommended that the complaint against the plaintiff be dismissed. The DB disagreed with the findings and recommendation of the DC and by a notice dated 2 September 2014, directed the plaintiff to appear before the DB on 18 October 2014 to make representations on why liability should not be found against him on the complaint, before it decided on an appropriate order to make as it deemed fit.

[5] After a hearing on 18 October 2014, the plaintiff was verbally informed by the DB of its decision to appoint a new DC to investigate the said complaint pursuant to s. 103D(3) of the LPA 1976 (as amended). Thereupon, the plaintiff's solicitors, M/s Nga Hock Cheh & Co filed an objection dated 31 October 2014 pursuant to s. 103EA against the ruling for the complaint to be reheard by a new DC. By a letter dated 10 November 2014, the DB formally informed the plaintiff that the complaint would be referred to a new DC pursuant to s. 103D(3) of the LPA (as amended).

[6] By its letter of 1 December 2014, to M/s Nga Hock Cheh & Co, the DB stated, amongst others:

> Please be informed that having considered your letter dated 30.10.2014, the Board has at its meeting held on 22 November 2014 decided to maintain its earlier decision to refer the complaint to a new Disciplinary Committee (DC) and further decided as follows:
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> (i) on the Respondent's assertion that the complaint is defective, this is an issue for new DC to decide;
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> (ii) the allegations of fraud or forgery are also matters for the new DC to decide;
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> (iii) on the issue of delay in lodging the complaint, since the Legal Profession Act, 1976 (pre Amendment) did not stipulate time limit in which the Complainant can lodge his complaint, the complaint is not time barred;
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> (iv) section 103EA and Section 103D(1) do not apply to the present complaint since this complaint was lodged prior to 3.6.2014.

[7] This prompted the plaintiff to commence the present originating summons dated 16 January 2015, to seek the following orders:

(a) That on a true interpretation of Part VII of the Legal Profession Act 1976 especially Section 94, 100 and 103A thereof, the Applicant, an advocate and solicitor against whom a complaint for misconduct of a criminal offence involving dishonesty, misuse and misappropriation of money is not liable to be subject to any disciplinary proceedings by the Disciplinary Board before he has been found guilty by a Court or law of any such offence involving dishonesty fraud forgery misuse or misappropriation of money.

(b) That the order of the second defendant dated 10/11/2014 to rehear the said Complaint of the first defendant against the Applicant before a new Disciplinary Committee is a violation of Article 145 (3) of the Federal Constitution as the Applicant has not yet been charged and convicted for any criminal offence by a Court of law and is accordingly null and void.

(c) That the order of the second defendant dated 10/11/2014 to rehear the said Complaint of the first defendant against the Applicant before a new Disciplinary Committee is a violation of Article 5(1) and/or Article 7(2) of Federal Constitution as the Applicant has not yet been charged and convicted for any criminal offence by a Court of Law and is accordingly null and void.

(d) That the order of the second defendant dated 10/11/2014 to appoint a new Disciplinary Committee to rehear the said Complaint of the first defendant against the plaintiff, being made in non compliance with Section 103D of the Legal Profession Act 1976, is null and void.

(e) That the said Complaint dated 19/6/2012 by the first defendant Respondent against the plaintiff is null and void for non compliance with Rule 3(2) (d) of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 as the first defendant has admitted in his evidence before the Disciplinary Committee chaired by Mr Silvanathan that the signature in the said letter of Complaint is not his and the first defendant does not know whose signature it is.

(f) That the said Complaint of the first defendant dated 19/6/2012 against the plaintiff is null and void on the ground that:

(i) The first defendant had admitted at the DC hearing that the plaintiff did not commit forgery.

(ii) The banker (Mr Leong Weng Onn) had testified before the DC hearing that the first defendant was the person who endorsed and cashed the cheque dated 22/5/2000 at Hock Hua Bank Berhad Sitiawan, Perak.

(g) That the inordinate delay by the first defendant in prosecuting his alleged Complaint against the Applicant without any explanation by the first defendant constitutes an abuse of the disciplinary process and is accordingly null and void.

A (h) Order that all disciplinary proceedings against the plaintiff based on the said Complaint be stayed forthwith pending the disposal of this unit.

(i) Costs against the first defendant.

(j) Any order that this honourable Court may deem fit and proper.

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Parties' Contentions

[8] The nub of the submission of counsel for the plaintiff, Mr Nga Hock Cheh was that the DB was not empowered under ss. 94(3), 100 and 103A of the LPA to investigate a complaint that amounted to a commission of a C criminal offence by an advocate and solicitor. The DB, he argued, was only empowered under the LPA to deal with and investigate complaints that were non criminal in nature.

[9] By appointing a DC to investigate the complaint made by the first defendant, *to wit*, forgery and fraud , Mr Nga argued, the DB had usurped D the discretionary powers conferred to the attorney general under art. 145(3) of the Federal Constitution. Article 145(3) conferred on the attorney general the sole power to institute, conduct and discontinue criminal proceedings. The DB and the DC had no power, he argued, to investigate and act on a complaint that was pending police investigation. It was pointed out that it E was common ground that the first defendant had lodged police reports against the plaintiff in relation to the complaint made to the Bar Council. The DB's power to commence disciplinary proceedings against an advocate and solicitor can only be exercised upon the criminal investigation being completed and the advocate and solicitor being charged and convicted by a F court of law. Mr Nga strenuously argued that as the plaintiff has not been charged on the police reports lodged by the first defendant, it was premature for the DB to have appointed a DC to investigate the complaint.

[10] It was further argued that arts. 5(1) and 8(1) of the Federal Constitution also protected the plaintiff being subjected to disciplinary G proceedings prior to any conviction being recorded against him under s. 409 of the Penal Code or any other offence involving fraud or dishonesty as spelt out in s. 103A(1)(b) of the LPA.

[11] Mr Ng clarified that he was not suggesting that the Bar Council was a hopeless bystander that was incompetent to deal with rogue lawyers who H cheated their clients. In respect of complaints alleging criminal misconduct, the Bar Council could avail itself of the power under s. 94(4) of the LPA to apply to the DB to suspend the said advocate and solicitor from practice. Disciplinary proceedings could be initiated against the advocate and solicitor who has been suspended upon his conviction by a court of law.

I **[12]** In the alternative, it was argued that the DB had no power under the LPA to direct that a new DC be appointed to rehear a complaint that was previously dismissed by a DC.

[13] In response, counsel for the first plaintiff and DB, Mr Awtar Singh Gill and Mr Raam Kumar, respectively, contended that ss. 94(3), 100 and 103A of the LPA did not support the proposition contended for by the plaintiff. There was no basis in the argument that the jurisdiction to investigate complaints under the LPA was confined to complaints which were non criminal in nature. Both counsel also took objection to the maintainability of the present application. It was said that if the plaintiff was unhappy with the decision of the DB to appoint a fresh DC to rehear the complaint, his recourse was not to seek declaratory relief in court, but to appeal against the decision to the High Court within one month as set out in s. 103E or to if the amended provision s. 103E applied, to apply to the court for a review of the decision of the DB.

Statutory Provisions

[14] It will be useful to set out the relevant provisions in the LPA on which the plaintiff's arguments are based. Section 94 reads:

> (1) All advocates and solicitors shall be subject for the purposes of all disciplinary actions to the control of the Disciplinary Board.
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> (2) Any advocate and solicitor who has been guilty of any misconduct shall be liable to be struck off the Roll or suspended from practice for any period not exceeding five years or ordered to pay a fine or to be reprimanded or censured.
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> (3) For the purposes of this Part, "misconduct" means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes:
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> (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
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> (b) breach of duty to a court including any failure by him to comply with an undertaking given to a court;
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> (c) dishonest or fraudulent conduct in the discharge of his duties;
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> (d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
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> (e) being adjudicated a bankrupt and being found guilty of any of the acts or omissions mentioned in paragraph 33(6)(a), (b), (c), (e) , (f), (h), (k) or (l) of the Bankruptcy Act 1967;
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> (f) the tendering or giving of any gratification to any person for having procured the employment in any legal business of himself or any other advocate and solicitor;
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> (g) directly or indirectly procuring or attempting to procure the employment of himself or any other advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

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(h) accepting employment in any legal business through a tout;

(i) allowing any unauthorised person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;

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(j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;

(k) the breach of any provision of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;

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(l) the disbarment, striking off, suspension or censure in his capacity as a legal practitioner in any other country or being guilty of conduct which would render him to be punished in any other country;

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(m) the charging, in the absence of a written agreement, in respect of professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;

(n) gross disregard of his client's interests; and

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(o) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.

(4) Where an advocate and solicitor:

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(a) has been found guilty by a court of law of any offence involving dishonesty, misuse or misappropriation of any money or property of a client or of any other person;

(b) has been disbarred, struck off, suspended, reprimanded or censured in his capacity as a legal practitioner in any other country;

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(c) is the subject of a complaint concerning any dishonest act committed by him in his capacity as an advocate and solicitor;

(d) has left the country or has not attended at his office in such circumstances that the Bar Council may reasonably presume that he has absconded; or

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(e) is otherwise incapable from infirmity of body or mind or any other cause of effectively performing the functions of an advocate and solicitor,

and the Bar Council considers that it would be in the public interest or in the interest of his clients or of the profession that such advocate and solicitor be suspended from practice, the Bar Council may apply to the Disciplinary Board for an order suspending such advocate and solicitor from practice until further notice.

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[15] Section 100 reads:

(1) Where a written application or complaint is made or referred to the Disciplinary Board, the Disciplinary Board shall, if it is satisfied that:

(a) there is no merit in the application or complaint, dismiss the application or complaint and notify the complainant and the advocate and solicitor of its decision; or

(b) there is merit in the application or complaint:

(i) post or deliver to the advocate and solicitor concerned a copy of the application or complaint together with all supporting documents, if any, furnished to it; and

(ii) Request the advocate and solicitor to furnish his written explanation in quadruplicate together with supporting documents, if any, within fourteen days of the request or within such longer time as the Disciplinary Board may allow.

(2) Where the advocate and solicitor does not furnish his written explanation to the Disciplinary Board within the time stipulated or within such longer time as may be allowed by the Disciplinary Board, the Disciplinary Board shall if it determines that:

(a) a formal investigation is necessary, proceed to appoint a Disciplinary Committee; or

(b) no formal investigation is necessary, proceed to consider whether there is merit in the application or complaint.

(3) Where the advocate and solicitor has furnished his written explanation to the Disciplinary Board within the time stipulated or within such longer time as may be allowed by the Disciplinary Board, the Disciplinary Board shall if it determines that:

(a) A formal investigation is necessary, proceed to appoint a Disciplinary Committee; or

(b) No formal investigation is necessary, proceed to consider whether there is merit in the application or complaint.

(4) the Disciplinary Board shall have the power to require the production of such further documents or explanation from either the complainant or the advocate and solicitor or both or from such other person as the Disciplinary Board may require before making a decision on the merits of the application or complaint.

(5) Where the Disciplinary Board is satisfied that there is no merit in the application or complaint under subsection (2) or (3), the Disciplinary Board shall dismiss the application or complaint and notify the complainant and the advocate and solicitor of its decision.

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(6) Where the Disciplinary Board is satisfied that there is merit in the application or complaint under subsection (2) or (3), it may deal with the application or complaint forthwith and impose an appropriate penalty or punishment in the following circumstances:

(a) where the advocate and solicitor has admitted to the misconduct or to the material fact establishing the misconduct;

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(b) where no cause of sufficient gravity exists for a formal investigation but the advocate and solicitor should be subject to be the penalty mentioned in paragraph 8(a) or (b); or

(c) Where the material facts establishing the misconduct are straight forward and do not warrant further investigation.

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(7) The Disciplinary Board shall, before making any order and imposing any penalty or punishment, notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.

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(8) the Disciplinary Board may impose any one of the following penalties or punishments:

(a) the recording of a reprimand or censure against the name of the advocate and solicitor;

(b) imposition of a fine upon the advocate and solicitor for such sum as the Disciplinary Board deems just;

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(i) suspension of the advocate and solicitor from practice for such period not exceeding five years as the Disciplinary Board deems appropriate in the circumstances; or

(d) striking the advocate and solicitor off the Roll

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(9) The imposition of a penalty or punishment shall not preclude the Disciplinary Board from making an order of restitution of any sum found due and owing to the complainant and stipulating the time within which such restitution ought to be made, failing which the Disciplinary Board may impose on the advocate and solicitor a higher punishment than that previously imposed.

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(10) A sum ordered by the Disciplinary Board under subsection (9) to be restituted may be recoverable by the complainant as a civil debt.

(11) The Disciplinary Board may at any stage of the proceedings determine that a formal investigation is required and appoint a Disciplinary Committee accordingly.

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(12) Any advocate and solicitor or any other person who without lawful excuse refuses or fails to produce to the Disciplinary Board document or fails to give any information which may relate to or be connected with the subject matter of the complaint shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three months or to both.

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[16] Section 103A reads:

(1) Where:

(a) the Disciplinary Board determines that that there should be a formal investigation;

(b) an advocate and solicitor has been convicted of an offence of criminal breach of trust under section 409 of the Penal Code or any other offence involving fraud or dishonesty; or

(c) the advocate and solicitor has been suspended under subsection 94(4), the Disciplinary Board shall, as soon as may be practicable, appoint a Disciplinary Committee to investigate and make recommendations to the Disciplinary Board.

(2) A Disciplinary Committee shall consist of three members of whom shall be:

(a) two advocates and solicitors; and

(b) one lay person.

appointed from the Disciplinary Committee Panel.

(3) The Disciplinary Board shall at the time of appointment of a Disciplinary Committee appoint a member from paragraph (2)(a) to be the chairman of the Disciplinary Committee.

Discussion And Decision

[17] I now turn to address the argument that the DB has no power by virtue of ss. 94(3), 100 and 103A of the LPA to initiate disciplinary proceedings against an advocate and solicitor against when the complaint made against him relates to criminal misconduct. I am unable to agree with this submission. An examination of s. 94 of the LPA shows that it does not state that a criminal conviction is a prerequisite for the appointment of a DC. This provision merely empowers the DB to deal with errant lawyers by striking them off the roll or by suspending them for misconduct. Section 94(3) sets out conduct which amounts to misconduct and a criminal conviction amounts to a misconduct under this subsection. It goes on to say that where an advocate and solicitor is guilty of any misconduct, the Bar Council if it considers that it would be in public interest or in the interests of his clients or of the profession that the advocate and solicitor be suspended from practice, it may apply to the DB for such an order to be made until further notice.

[18] Next, I turn to consider s. 100. It deals with the procedure to be undertaken when a written application or complaint is referred to the DB. It authorises the DB to refer the application or complaint to a DC for formal investigation if it deemed necessary. It does not proscribe the power of the DB to refer an application or complaint to a DC to non criminal misconduct.

[19] Lastly, I turn to consider s. 103A(1). This section states that the DB can appoint a DC in three instances; the first is when DB determines that a DC ought to be appointed; secondly, when an advocate and solicitor has been convicted of an offence of criminal breach of trust or any other offence involving fraud or dishonesty; and thirdly, when the advocate and solicitor has been suspended. In the present instance, it is clear that the DB proceeded under the first instance. The first instance would arise when a written application or complaint is referred to the DB pursuant to s. 100.

[20] It is clear from the sections discussed above, that the DB is entitled to investigate any complaint or misconduct against an advocate and solicitor upon a written application or a complaint made to it which comes within the scope of s. 94(3). I find myself unable to agree with the proposition that complaints that allege criminal misconduct by an advocate and solicitor cannot be investigated by the DC and DB until the advocate and solicitor concerned is convicted by a court of law. Nor do I agree with the plaintiff that the failure of the DB to apply for the plaintiff's suspension precludes it from appointing a DC to investigate the complaint.

[21] I also see no merit in the contention that the DB was in violation of the articles in the Federal Constitution when it initiated disciplinary proceedings against the plaintiff prior to his conviction. I fail to see how the initiation of disciplinary proceedings against an advocate and solicitor in respect of a complaint alleging criminal misconduct is a usurpation of the powers of the attorney general. The LPA expressly provides under s. 94(3)(c) that a complaint against an advocate and solicitor alleging that he had been dishonest or fraudulent in the discharge of his duties is misconduct that permits the DB to appoint a DC to investigate the complaint. If the Legislature had intended to limit the powers of the DB to investigate complaints that were not criminal in nature, it would have expressly provided so, and further (3)(c) in sub-s. 3 to s. 94 would have been omitted.

[22] That brings me to the issue of whether the present application is maintainable to challenge the decision of the DB for the first defendant's complaint against the plaintiff to be reheard by a new panel. It is common ground in the instant case that pursuant to s. 103D, it is permissible for the DB to disagree with the findings or recommendation of the DC and made such order that it deems fit. The plaintiff accepted that pursuant to s. 103EA, he should have filed an application to review the order made by the DB against the plaintiff but contended that the LPA did not preclude him making this application.

[23] Section 103EA reads:

> (1) Where a party is aggrieved by any decision, order, ruling or direction of the Disciplinary Committee or the Disciplinary Board, other than a final order or decision made by the Disciplinary Board referred to in section 103E, the aggrieved party may file an

objection in writing in respect of any such decision, order, ruling or direction with the Disciplinary Committee or Disciplinary Board, as the case may be, within fourteen days of being duly notified of the decision, order, ruling or direction.

...

(7) If an aggrieved party does not apply for review, the order or decision of the Disciplinary Board shall take effect immediately upon the expiration of the period of thirty days.

[24] I agree with the defendants that the present application is not maintainable as the plaintiff's recourse if he was dissatisfied with the order made by the DB was to seek a review of the order. The plaintiff as an advocate and solicitor is bound by the provisions in the LPA.

[25] For the reasons stated, I find that the declarations sought by the plaintiff are without any legal basis and this application is accordingly dismissed.